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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,507	10/24/2003	Timothy S. Simpson	022082.0003US	9287
34284	7590	05/02/2007		
Rutan & Tucker, LLP. Hani Z. Sayed 611 ANTON BLVD SUITE 1400 COSTA MESA, CA 92626			EXAMINER SINGH, SUNIL	
			ART UNIT 3673	PAPER NUMBER
			MAIL DATE 05/02/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/692,507	SIMPSON ET AL.	
	Examiner	Art Unit	
	Sunil Singh	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-15 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 3-5 and 7-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: page 4 at line 20, "Fig. 4A" seems incorrect. Page 9 line 12, it is not clear if "123" is correct. Should it be "124" or "132" or the sum of the two? Appropriate correction is required.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Reference character 112 (page 5 of spec). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3, 12-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how the "discharge rate" is independent of the "water depth".

Claim 3 is confusing because at line 2, it calls for "one or more baffles"; however subsequent to that there is only mention of baffles. Reference needs to be made in "one baffle" scenario. Claim 3 line 7, "the water depth" lacks clear antecedent basis.

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 3, 12-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not enable one skilled in the art to make and/or use the invention because it is clear how to have the "discharge rate" remain independent of the water depth.

Insofar the claims are understood, the following rejection(s) apply:

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by Arnaud (US 5647977).

Arnaud discloses a flow limiting inlet structure comprising a tiered set of one or more baffles coupled to an outlet (see Fig. 11), the discharge rate through the outlet remains substantially independent of the water depth (this is considered to be true when the water depth is at or above the depth where reference character (218) is pointing and the valve (222) dictate the discharge rate).

9. Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by Clarke US 5840198)

Clarke discloses a flow limiting inlet structure comprising a tiered set of one or more baffles (22) coupled to an outlet ((16,44), see Fig. 1), the discharge rate through the outlet remains substantially independent of the water depth (this is considered to be true since valve (42) dictate the discharge rate).

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10. Claims 4,5,7-11, 12,14 are rejected under 35 U.S.C. 102(b) as being anticipated by Finley et al. (US 6313545).

Finley et al. discloses a flow limiting inlet structure (see Fig. 14) comprising a discharge riser (this is considered member (20) which discharges fluid) surrounded by a tiered set of nested baffles (40) wherein an inlet area of the set increases as fluid depth increases. With regards to claim 12, discharge rate through an outlet (this is considered as opening where (25) and (22) meet is independent of water depth. It does not matter what the water depth is since pump 25 dictates what flows out.

11. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finley et al. '545 (Fig. 14) in view of Finley et al. '545 (Fig. 9).

Finley et al. (Fig. 14) discloses a flow limiting inlet structure (see Fig. 14) comprising a tiered set of one or more baffles (40) coupled to an outlet (this is considered as the opening where (25) and (22) meet in Figs. 4-8, 14), a discharge riser (this is considered as the vertical portion of member (20) depicted in Fig. 14). However, Finley et al. (Fig. 14) is silent about the riser (this is considered as the vertical portion of member (20) depicted in Fig. 14) including a plurality of openings. Finley et al. (Fig. 9) teaches a riser having a plurality of openings (this is considered as the vertical portion of member (20) depicted in Fig. 9 having a plurality of openings (110)). It would have been considered obvious to one of ordinary skill in the art to modify Finley et al. (Fig. 14) to include the riser with a plurality of openings as taught by Finley et al. (Fig. 9) since this would be a design choice to use a power generator as taught by Figure 9.

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With regards to claims 13 and 15, discharge rate through an outlet (this is considered as opening where (25) and (22) meet is independent of water depth. It does not matter what the water depth is since pump 25 dictates what flows out.

Response to Arguments

12. Applicant's arguments with respect to claims 3, 4, 14, 15 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Engle Patricia can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sunil Singh
Primary Examiner
Art Unit 3673



SS


3/19/07